

EXHIBIT 12

EXHIBIT 12

Madeleine Zabriskie

From: dburnett@schneiderwallace.com
Sent: Friday, May 23, 2025 3:23 PM
To: Sylvia.Simson@gtlaw.com; BrodyA@gtlaw.com
Cc: rhicks@schneiderwallace.com; cbrust@rssblaw.com; STountas@kasowitz.com; jchristian@christianattarlaw.com; jlh@bankruptcyreno.com
Subject: Re: In re Meta Materials - Objections to Subpoenas
Attachments: In re Meta Materials Anson Funds protective order -- May 23 draft.docx

Sylvia:

Please let us know your availability for a meet and confer next week about the Anson subpoenas. I've copied my colleagues who also represent the trustee.

I've attached a proposed protective order between the parties, in anticipation of Anson's future productions after we've conferred. We've used the same template with all subpoena recipients, and the Court so-ordered a nearly-identical one yesterday.

You asked us for substantive responses to your objections to the subpoenas before agreeing to a meet and confer. That does not bode well for the likelihood that Anson will comply with the subpoenas. Nonetheless, as requested:

The two subpoenas were issued pursuant to Fed. R. Civ. P. 45 and Fed. R. Bankr. P. 9016, as stated on their cover pages. Rule 9016 allows for service of subpoenas in bankruptcy proceedings, stating that "Fed. R. Civ. P. 45 applies in a bankruptcy case." Local Rule 2004 of the U.S. Bankruptcy Court for the District of Nevada provides as follows: "(c) Production of documents. Production of documents[may] be obtained via subpoena as provided by Fed. R. Civ. P. 45(a)(1)(C), as adopted by Fed. R. Bankr. P. 9016."

Fed. R. Bankr. P. 2004, Examinations, provides that "On a party in interest's motion, the court may order the examination of any entity," and such examination can involve "any matter that may affect the administration of the debtor's estate." Section (c) of Rule 2004 provides as follows: "Compelling Attendance and the Production of Documents or Electronically Stored Information. Regardless of the district where the examination will be conducted, an entity may be compelled under Rule 9016 to attend and produce documents or electronically stored information. An attorney may issue and sign a subpoena on behalf of the court where the case is pending if the attorney is admitted to practice in that court."

Fed. R. Bankr. P. 6009 is the "Right of the Trustee or Debtor in Possession to Prosecute and Defend Proceedings." It states that "With or without court approval, the trustee or debtor in possession may: . . . (b) commence and prosecute in any tribunal an action or proceeding on the estate's behalf."

Authorities in this district explain these rules further: "Outside the usual discovery tools available in federal civil practice, Bankruptcy Rule 2004 also allows any party in interest to seek a court order permitting the examination of any entity. To assist in such examinations or production of records, Bankruptcy Rule 9016 provides for the issuance of subpoenas under Civil Rule 45. Like compelled discovery and testimony of third parties in federal civil practice, the usual protections and limitations

may be sought." *Cash Cloud, Inc. v. Lux Vending, LLC (In re Cash Cloud, Inc.)*, 2024 Bankr. LEXIS 2159, *15 (Bankr. D. Nev. Sept. 10, 2024). In *In re Quicker Liquor LLC*, 2022 Bankr. LEXIS 1846, *5 (Bankr. D. Nev. June 22, 2022), the court explained that

Any party in interest may request permission to conduct a 2004 Examination. Fed.R.Bankr.P. 2004(a). The examination "may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Fed.R.Bankr.P. 2004(b). The "...production of documents or electronically stored information ...may be compelled as provided in Rule 9016 for the attendance of a witness as a hearing or trial." Fed.R.Bankr.P. 2004(c). Bankruptcy Rule 9016 provides for the attendance of witnesses to be compelled by issuance of a subpoena under Civil Rule 45. See Fed.R.Bankr.P. 9016. In addition to compelling a witness to give testimony, subpoenas issued under Civil Rule 45 also may compel the production of documents and electronically stored information

Also, 11 U.S. Code § 704, part of the Chapter 7 bankruptcy statutes, sets forth the "Duties of trustee." "In light of these duties, a Chapter 7 trustee is described as a fiduciary charged with protecting the interests of all creditors of the estate." *In re Bollinger*, 2015 Bankr. LEXIS 4572, *17 (Bankr. D. Nev. June 29, 2015). Section 704 provides in relevant part that "(a) The trustee *shall* . . . (4) investigate the financial affairs of the debtor" (emphasis added). Those financial affairs include, here, the Trustee's investigation of trading in the debtor's stock, which may have affected the debtor's financial affairs in various ways. "The role of counsel for the trustee . . . is to perform those tasks [under 11 U.S. Code § 704] that require special expertise beyond that expected of an ordinary trustee." *In re Virissimo*, 354 B.R. 284, 290.

Christina Lovato, the Trustee in this bankruptcy action, *In re Meta Materials Inc.*, Case No.: 24-50792-hlb (Bankr. D. Nev.), acting through counsel, has chosen to issue subpoenas to many parties related to the trading of Meta securities (including the tickers MMAT, TRCH, and MMTLP). We believe that Anson traded Meta securities during the time period listed in the subpoenas. The subpoenas were issued as part of the Trustee's ongoing investigations into the financial affairs of the debtor. The decisionmaking behind which parties received subpoenas and why, including as it relates to the Anson subpoenas, is not something we can disclose given privilege and attorney work product concerns.

Best,
David



David D. Burnett
Attorney at Law
 1050 30th Street NW
 Washington, DC 20007
 Main Line: (415) 421-7100
 Toll Free: (800) 689-0024
 Direct: (510) 740-2939
 Facsimile: (415) 421-7105

www.schneiderwallace.com

***Admitted in New York and District of Columbia.**

From: Sylvia.Simson@gtlaw.com <Sylvia.Simson@gtlaw.com>

Sent: Friday, May 9, 2025 11:17 AM

To: David D. Burnett <dburnett@schneiderwallace.com>; BrodyA@gtlaw.com <BrodyA@gtlaw.com>

Cc: Ryan R. C. Hicks <rhicks@schneiderwallace.com>; cbrust@rssblaw.com <cbrust@rssblaw.com>; STountas@kasowitz.com <STountas@kasowitz.com>

Subject: RE: In re Meta Materials - Objections to Subpoenas

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David,

We have not received the authorities requested to be provided by the Trustee in support of its position, so we assume the call is going to be rescheduled until those are sent. Please advise as to when we can expect to hear from the Trustee with those authorities and your corresponding availability thereafter for a meet and confer. Anson Funds reserves all rights.

Thank you.

Sylvia Simson
Shareholder

Greenberg Traurig, LLP
One Vanderbilt Avenue | New York, NY 10017
T +1 212.801.9275

Sylvia.Simson@gtlaw.com | www.gtlaw.com | [View GT Biography](#)



From: Simson, Sylvia (Shld-NY-LT)

Sent: Wednesday, May 7, 2025 11:37 AM

To: David D. Burnett <dburnett@schneiderwallace.com>; Brody, Alan (Shld-NJ-Bky) <BrodyA@gtlaw.com>

Cc: Ryan R. C. Hicks <rhicks@schneiderwallace.com>; cbrust@rssblaw.com; STountas@kasowitz.com

Subject: RE: In re Meta Materials - Objections to Subpoenas

David,

Throughout the subpoena, Anson Funds made clear it objects to the Subpoena Requests as seeking material beyond the scope of Bankruptcy Rule 2004, that bears no nexus to the administration of the debtor's estate, and is irrelevant to the conduct, property, liabilities, or financial condition of the debtor. If the Trustee has specific case law/authorities involving trading transactions by non-debtor parties that it believes supports the subpoena requests, please provide them in advance of any call and by Thursday COB if we are having a call on Friday. This request is not intended to limit, waive, or alter any of Anson Funds' other valid objections but so that we understand the Trustee's position in advance of any meet and confer. Anson Funds reserves all rights.

Thank you.

Sylvia Simson
Shareholder

Greenberg Traurig, LLP
One Vanderbilt Avenue | New York, NY 10017
T +1 212.801.9275

Sylvia.Simson@gtlaw.com | www.gtlaw.com | [View GT Biography](#)



From: David D. Burnett <dburnett@schneiderwallace.com>
Sent: Tuesday, May 6, 2025 5:19 PM
To: Simson, Sylvia (Shld-NY-LT) <Sylvia.Simson@gtlaw.com>; Brody, Alan (Shld-NJ-Bky) <BrodyA@gtlaw.com>
Cc: Ryan R. C. Hicks <rhicks@schneiderwallace.com>; cbrust@rssblaw.com; STountas@kasowitz.com
Subject: Re: In re Meta Materials - Objections to Subpoenas

Sylvia:

Friday works for me any time during your time window, but I'll let my colleagues chime in on their availability as well. As for authorities that support the Trustee's position, do you mean authority supporting the Trustee's responses to all of the objections raised in your April 7 Objections to Subpoenas document? I anticipate discussing the parties' positions on our call. Or are you speaking specifically about authority for the Trustee's grounds for serving the subpoenas?

Thanks,
David



David D. Burnett
Attorney at Law
1050 30th Street NW
Washington, DC 20007
Main Line: (415) 421-7100
Toll Free: (800) 689-0024
Direct: (510) 740-2939
Facsimile: (415) 421-7105
www.schneiderwallace.com

****Admitted in New York and District of Columbia.***

From: Sylvia.Simson@gtlaw.com
Sent: Monday, May 05, 2025 10:32 PM
To: David D. Burnett; BrodyA@gtlaw.com
Cc: Ryan R. C. Hicks; cbrust@rssblaw.com; STountas@kasowitz.com
Subject: RE: In re Meta Materials - Objections to Subpoenas

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David,

We are willing to have a call regarding our objections and are available Thursday afternoon between 2 and 5 EST and Friday between 10:30 and 2 EST. However, before any call, please identify what authorities the Trustee has that support the Trustee's position so we can review them in advance of the call. Please note Anson is not committing to anything by virtue of us agreeing to a call and that Anson reserves all rights.

Thank you.

Sylvia Simson
Shareholder

Greenberg Traurig, LLP
One Vanderbilt Avenue | New York, NY 10017
T +1 212.801.9275
Sylvia.Simson@gtlaw.com | www.gtlaw.com | [View GT Biography](#)



From: David D. Burnett <dburnett@schneiderwallace.com>
Sent: Monday, May 5, 2025 5:15 PM
To: Simson, Sylvia (Shld-NY-LT) <Sylvia.Simson@gtlaw.com>; Brody, Alan (Shld-NJ-Bky) <BrodyA@gtlaw.com>
Cc: Ryan R. C. Hicks <rhicks@schneiderwallace.com>; cbrust@rssblaw.com; Stephen W. Tountas <STountas@kasowitz.com>
Subject: Re: In re Meta Materials - Objections to Subpoenas

EXTERNAL TO GT

Sylvia:

I'm following up on your email below to my colleague Clay regarding the Trustee's subpoenas to Anson Funds in this case. We're contacting you on behalf of the Trustee. My colleagues and I, copied, would like to schedule a call to discuss your objections. Please let us know your availability later this week. We'd like to discuss the requests and map out a plan for Anson to produce responsive materials, starting with trade data. We believe the parties should be able to find common ground.

In the interim, to address your objections about producing confidential information: there isn't an applicable protective order in place yet but we can send you a proposed one.

Thanks,
David

Begin forwarded message:



David D. Burnett
Attorney at Law
1050 30th Street NW
Washington, DC 20007
Main Line: (415) 421-7100
Toll Free: (800) 689-0024

Direct: (510) 740-2939
Facsimile: (415) 421-7105
www.schneiderwallace.com

****Admitted in New York and District of Columbia.***

From: <Sylvia.Simson@gtlaw.com>

Subject: In re Meta Materials - Objections to Subpoenas

Date: April 7, 2025 at 11:16:26 AM PDT

To: <CBrust@rssblaw.com>

Cc: <BrodyA@gtlaw.com>

Clayton, please see the attached, a copy of which will be mailed to you by UPS. Thank you.

Sylvia Simson
Shareholder

Greenberg Traurig, LLP
One Vanderbilt Avenue | New York, NY 10017
T +1 212.801.9275
Sylvia.Simson@gtlaw.com | www.gtlaw.com | [View GT Biography](#)



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